

ZOLDAN LAW GROUP, PLLC
14500 N. Northsight Blvd., Suite 213 Scottsdale, Arizona 85260
Tel & Fax: 480.442.3410 – mzoldan@zoldangroup.com

Michael Zoldan; AZ Bar No. 028128
Jason Barrat; AZ Bar No. 029086
Jessica Miller; AZ Bar No. 031005
ZOLDAN LAW GROUP, PLLC
14500 N. Northsight Blvd. Suite 213
Scottsdale, AZ 85260
Tel & Fax: 480.442.3410
mzoldan@zoldangroup.com
jbarrat@zoldangroup.com
jmiller@zoldangroup.com

Attorneys for Plaintiffs
Joseph Simko and Jacob Swearingen

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Joseph Simko, an Arizona resident;
Jacob Swearingen, an Arizona resident;

Plaintiffs,

v.

World Class Car Wash, LLC an Arizona
limited liability company; and **Robert**
Salvato, an Arizona resident;

Defendants.

Case No.

VERIFIED COMPLAINT

(Jury Trial Requested)

Plaintiffs Joseph Simko and Jacob Swearingen, for their Verified Complaint against
Defendants, hereby allege as follows:

NATURE OF THE CASE

1. Plaintiffs brings this action against Defendants for their unlawful failure to
pay overtime and minimum wage in violation of the Fair Labor Standards Act, 29 U.S.C.
§§ 201-219 (hereinafter “**FLSA**”); A.R.S. §§ 23-362 - 23-364 (“**Arizona Minimum Wage**
Statute”); and failure to make timely payment of wages under the Arizona Wage Statute,

1 A.R.S. §§ 23-351, 23-353, and 23-355 (“**Arizona Wage Statute**”).

2 2. This action is brought to recover unpaid overtime wage compensation,
3 liquidated damages, and statutory penalties resulting from Defendants’ violations of the
4 FLSA.

5 3. This action is also brought to recover minimum wage compensation,
6 liquidated damages, and statutory penalties resulting from Defendants’ violations of the
7 FLSA and Arizona Minimum Wage Statute.

8 4. This action is also brought to recover unpaid wages, treble damages, and
9 statutory penalties resulting from Defendants’ violations of the Arizona Wage Statute.

10 **JURISDICTION AND VENUE**

11 5. This Court has jurisdiction over the subject matter and the parties hereto
12 pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

13 6. Plaintiffs’ state law claims are sufficiently related to their federal claims that
14 it forms the same case or controversy. This Court therefore has supplemental jurisdiction
15 over Plaintiffs’ claims under the Arizona Minimum Wage Statute and the Arizona Wage
16 Statute pursuant to 28 U.S.C. § 1367.

17 7. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) because
18 all or a substantial part of the acts or omissions giving rise to the claims occurred in the
19 state of Arizona. Plaintiffs were employed by Defendants in this District.

20 **PARTIES**

21 8. At all relevant times to the matters alleged herein, Plaintiff Joseph Simko
22 (“**Simko**”) resided in the District of Arizona.

23 9. Simko was a full-time employee of Defendants from on or around January
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1 15, 2016 until on or about June 11, 2017.

2 10. At all relevant times, Simko was an employee of Defendants as defined in 29
3 U.S.C. § 203(e)(1).
4

5 11. At all relevant times, Simko was an employee of Defendants defined under
6 the Arizona Minimum Wage Statute and Arizona Wage Statute.

7 12. At all relevant times to the matters alleged herein, Plaintiff Jacob Swearingen
8 (“Swearingen”) resided in the District of Arizona.
9

10 13. Swearingen commenced employment with Defendants on or around July 1,
11 2014 and currently remains a full-time employee.

12 14. At all relevant times, Swearingen was an employee of Defendants as defined
13 in 29 U.S.C. § 203(e)(1).
14

15 15. At all relevant times, Swearingen was an employee of Defendants defined
16 under the Arizona Minimum Wage Statute and Arizona Wage Statute.

17 16. Defendant World Class Car Wash, LLC is an Arizona limited liability
18 company, authorized to do business in Arizona, and was Plaintiffs’ employer as defined by
19 29 U.S.C. § 203(d), the Arizona Minimum Wage Statute, and Arizona Wage Statute.
20

21 17. Defendant Robert Salvato is an Arizona resident. He has directly caused
22 events to take place giving rise to this action. Robert Salvato is the owner of World Class
23 Car Wash, LLC.
24

25 18. Under the FLSA, Defendant Robert Salvato is an employer. The FLSA
26 defines “employer” as any individual who acts directly or indirectly in the interest of an
27 employer in relation to an employee. Defendant Robert Salvato is the owner of World
28 Class Car Wash, LLC. He determined the method and rate of Plaintiff’s payment of wages.

1 As person who acted in the interest of World Class Car Wash, LLC in relation to the
2 company's employees, Robert Salvato is subject to individual and personal liability under
3 the FLSA.

4
5 19. Plaintiffs are further informed, believe, and thereon allege that each of the
6 Defendants herein gave consent to, ratified, and authorized the acts of all other Defendants,
7 as alleged herein.

8
9 20. Defendants, and each of them, are sued in both their individual and corporate
10 capacities.

11 21. Defendants are jointly and severally liable for the injuries and damages
12 sustained by Plaintiffs.

13
14 22. At all relevant times, Defendants have been engaged in interstate commerce
15 and have been an enterprise whose gross annual volume of sales made or business done is
16 greater than \$500,000.

17 **FACTUAL ALLEGATIONS**

18
19 23. Defendant World Class Car Wash, LLC provides washing and detailing
20 services on cars and other motor vehicles.

21 24. On or around January 15, 2016, Simko began employment with Defendants
22 as an employee.

23 25. Simko's primary job duties included washing, drying, and detailing of all
24 vehicles by hand.

25
26 26. On June 11, 2017, Simko was terminated from World Class Car Wash, LLC.

27 27. On or around July 1, 2014, Swearingen began employment with Defendants
28 as an employee.

1 28. Swearingen's primary job duties included washing, drying, and detailing of
2 all vehicles by hand.

3 29. At all relevant times, Plaintiffs were non-exempt employees and were paid
4 at varying rates dependent upon the number of days per week they worked.

5 30. For example, if Plaintiffs worked five days per week, they were paid at a rate
6 of \$2.50 per hour; if Plaintiffs worked four days per week, they were paid at a rate of \$2.00
7 per hour; and if Plaintiffs worked three days per week, they were paid at a rate of \$1.80 per
8 hour- all of which are below the Arizona's and the FLSA's minimum wage requirements.

9 31. As a result of only receiving between \$1.80 per hour and \$2.50 per hour for
10 all hours worked in a given workweek, an FLSA and Arizona minimum wage violation has
11 occurred.

12 32. Simko earned less than \$455 per workweek, which is less than the salary-
13 basis for exempt employees. Therefore, Simko, regardless of his job duties and
14 responsibilities, was a non-exempt employee pursuant to the FLSA.

15 33. Swearingen earned less than \$455 per workweek, which is less than the
16 salary-basis for exempt employees. Therefore, Swearingen, regardless of his job duties
17 and responsibilities, was a non-exempt employee pursuant to the FLSA.

18 34. At all relevant times during Plaintiffs' employment, Defendants failed to
19 properly compensate Plaintiffs Federal and Arizona minimum wage.

20 35. At all relevant times during Plaintiffs' employment, Defendants failed to
21 properly compensate Plaintiffs for all their overtime hours.

22 36. Defendants were aware that Plaintiffs' working hours routinely exceeded 40
23 hours, and required them to work overtime as a condition of their employment.
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46. Defendants' actions in failing to properly compensate Plaintiffs, in violation

1 of the FLSA, were willful. Defendants knew Plaintiffs were not being compensated
2 properly for time worked and failed to pay proper minimum wages. Defendants knew their
3 failure to pay minimum wage was a violation of the FLSA.
4

5 47. Defendants have not made a good faith effort to comply with the FLSA.

6 48. Plaintiffs are also entitled to an award of attorneys' fees and other statutory
7 damages pursuant to 29 U.S.C. § 216(b).
8

9 **COUNT II**
(FAILURE TO PAY OVERTIME WAGES – FLSA – 29 U.S.C. § 207)

10 49. Plaintiffs incorporate by reference all of the above allegations as though fully
11 set forth herein.
12

13 50. At all relevant times, Plaintiffs were employed by Defendants within the
14 meaning of the FLSA.

15 51. Plaintiffs were non-exempt employees entitled to the statutorily mandated
16 overtime wage.
17

18 52. Defendants have intentionally failed and/or refused to pay Plaintiffs overtime
19 wages according to the provisions of the FLSA.

20 53. As a direct result of Defendants' violations of the FLSA, Plaintiffs have
21 suffered damages by not receiving compensation in accordance with 29 U.S.C. § 207.
22

23 54. In addition to the amount of unpaid overtime wages owed to Plaintiffs, they
24 are entitled to recover an additional equal amount as liquidated damages pursuant to 29
25 U.S.C. § 216(b).
26

27 55. Defendants' actions in failing to compensate Plaintiffs, in violation of the
28 FLSA, were willful. Defendants knew Plaintiffs were not being compensated overtime for
time worked in excess of 40 hours in a given workweek and failed to pay proper overtime

1 wages. Defendants knew their failure to pay overtime wages was a violation of the FLSA.

2 56. Defendants have not made a good faith effort to comply with the FLSA.

3 57. Plaintiffs are also entitled to an award of attorneys' fees and other statutory
4 damages pursuant to 29 U.S.C. § 216(b).

5
6 **COUNT III**
7 **(FAILURE TO PAY MINIMUM WAGE – ARIZONA MINIMUM WAGE**
8 **STATUTE)**

9 58. Plaintiffs incorporate by reference all of the above allegations as though fully
10 set forth herein.

11 59. At all relevant times, Plaintiffs were employed by Defendants within the
12 meaning of the Arizona Minimum Wage Statute.

13 60. Defendants intentionally failed and/or refused to pay Plaintiffs minimum
14 wage according to the provisions of the Arizona Minimum Wage Statute.

15 61. In addition to the amount of unpaid minimum wage owed to Plaintiffs, they
16 are entitled to recover an additional amount equal to twice the underpaid wages and interest
17 pursuant to A.R.S. § 23-364(g).

18 62. Plaintiffs are also entitled to an award of attorneys' fees and costs pursuant
19 to A.R.S. § 23-364(g).

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21 **COUNT IV**
22 **(FAILURE TO TIMELY PAY WAGES DUE – ARIZONA WAGE STATUTE)**

23 63. Plaintiffs incorporate by reference all of the above allegations as though fully
24 set forth herein.

25 64. At all relevant times, Plaintiffs were employed by Defendants within the
26 meaning of the Arizona Wage Statute.

27 65. Defendants were aware of their obligation to pay timely wages pursuant to
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1 A.R.S. § 23-351.

2 66. Defendants were aware that, under A.R.S. § 23-353, they were obligated to
3 pay all wages due to Plaintiffs.
4

5 67. Defendants failed to timely pay Plaintiffs their wages due without a good
6 faith basis for withholding the wages.

7 68. Defendants have willfully failed and refused to timely pay wages due to
8 Plaintiffs. As a result of Defendants' unlawful acts, Plaintiffs are entitled to the statutory
9 remedies provided pursuant to A.R.S. § 23-355.
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11 **CONCLUSION AND PRAYER FOR RELIEF**

12 **WHEREFORE**, Plaintiffs pray:

13 A. For the Court to declare and find that the Defendants committed one or more
14 of the following acts:

15 i. violated minimum wage provisions of the FLSA, 29 U.S.C. § 206, by
16 failing to pay minimum wages;

17 ii. willfully violated minimum wage provisions of the FLSA, 29 U.S.C. §
18 206;

19 iii. violated overtime wage provisions of the FLSA, 29 U.S.C. § 207, by
20 failing to pay overtime;

21 iv. willfully violated overtime wage provisions of the FLSA, 29 U.S.C. §
22 207;

23 v. violated minimum wage provisions of the Arizona Minimum Wage
24 Statute, by failing to pay minimum wages;

25 vi. willfully violated minimum wage provisions of the Arizona Minimum
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Wage Statute;

vii. willfully violated the Arizona Wage Statute by failing to timely pay all wages due to Plaintiffs;

- B. For the Court to award compensatory damages, including liquidated damages pursuant to 29 U.S.C. § 216(b) and/or treble damages pursuant to A.R.S. § 23-355, to be determined at trial;
- C. For the Court to award interest on all wage compensation due accruing from the date such amounts were due under all causes of action set forth herein;
- D. For the Court to award such other monetary, injunctive, equitable, and declaratory relief as the Court deems just and proper;
- E. For the Court to award Plaintiffs' reasonable attorneys' fees and costs pursuant to 29 U.S.C. § 216(b), A.R.S. § 23-364(g), and A.R.S. § 12-341.01 and all other causes of action set forth herein;
- F. Any other remedies or judgments deemed just and equitable by this Court.

JURY DEMAND

Plaintiffs hereby demand a trial by jury of all issues so triable.

RESPECTFULLY SUBMITTED October 20, 2017.

ZOLDAN LAW GROUP, PLLC

By: /s/ Jason Barrat
14500 N. Northsight Blvd. Suite 213
Scottsdale, AZ 85260
Attorneys for Plaintiffs

14500 N. Northsight Blvd. Suite 213 Scottsdale, Arizona 85260
Tel & Fax: 480.442.3410 – mzoldan@zoldangroup.com

Plaintiffs Joseph Simko and Jacob Swearingen declare under penalty of perjury that they have read the foregoing Verified Complaint and are familiar with the contents thereof. The matters asserted therein are true and based on their personal knowledge, except as to those matters stated upon information and belief, and as to those matters, they believe them to be true.

Joseph Simko
Jacob Swearingen